

REMARKS

Affirmation of Election

The Applicant hereby affirms its previous election, without traverse of the Examiner's restriction requirement under 35 U.S.C. 121, to restrict the prosecution of the present application to the invention of Group I (as set out in the aforementioned Office action), as claimed in Claims 1-23. Therefore, Claims 1-23 remain in this application, each of which reads on the elected species of invention. Claims 24-29, which the Examiner has identified as being drawn to a non-elected invention, are hereby withdrawn. The withdrawal of Claims 24-29 is without prejudice to the Applicant's right to re-present these claims, whether later in the course of the prosecution of the present application or in a later filed divisional application.

Terminal Disclaimer

In the above-referenced Office action, the Examiner rejected Claims 1-23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-22 of U.S. Patent No. 6,830,369 and Claims 1-22 of U.S. Patent No. 7,029,166. The Examiner also indicated, in the aforementioned Office action, that this objection would be traversed upon the filing of a terminal disclaimer to overcome same. At this time, therefore, please find enclosed herewith a Terminal Disclaimer signed by the Agent of Record on behalf of the owner herein, namely, Enersave Fluid Mixers Inc. The appropriate fee as set forth in 37 CFR § 1.20(d), taken from the Deposit Account of the Agent of Record herein, also accompanies the present submission.

It is to be appreciated that an assignment from the inventors herein to the current owner of record, Enersave Fluid Mixers Inc. is recorded in the United States Patent and Trademark Office at Reel 015053, Frame 0710. Of course, it should be further appreciated that Enersave Fluid Mixers Inc. is also the owner of record of cited U.S. Patent Nos. 6,830,369 and 7,029,166 by reason of assignments of these patents to

Enersave Fluid Mixers Inc. which were recorded in the United States Patent and Trademark Office at Reel 013772, Frame 0625 and at Reel 016507, Frame 0823, respectively.

In light of the Applicant's submission of the enclosed terminal disclaimer, it is respectfully requested that the Examiner's aforementioned obviousness-type double patenting rejection be removed. In view of the foregoing, and because no further objections or rejections have been raised in respect of Claims 1-7, it is respectfully requested that at least each of Claims 1-7 be allowed in their current form.

Claim Rejections – 35 USC § 103

In the above-referenced Office action, claims 8-23 were rejected under 35 USC § 103(a) as being unpatentable over the cited Van De Water reference in view of the cited Rudasill reference. In this regard, it was held that the cited Van De Water reference discloses a housing frame e above a vessel h, a mixing head k, shaft c, a reciprocating drive f, g, i, with a linear bearing assembly with a pair of upper and lower bearing assemblies d, d with a bushing block about the rod c. Without more, it was additionally held that the Van De Water reference discloses all of the recited subject matter as defined within the scope of the claims (presumably, of each and every one of Claims 8-23), with the exception of having the mixing head of the configuration of the blade body with two ends having a tapered passageway. The cited Rudasill reference was held to disclose a mixing head P, p which has opposed ends and a passageway which forms a taper configuration between the first and second ends for mixing when the rod is reciprocated.

A. Features not Taught by the Combination

At the outset, therefore, the Applicant notes its respectful position that – notwithstanding any findings to the contrary in the aforementioned Office action – none of the proffered combinations of the cited Van De Water and Rudasill references, as set

forth by the Examiner, render obvious a particular feature of the Applicant's invention which is recited in Claim 8 of the present application, namely, as follows: a passageway that extends – and tapers as it extends – between first and second ends of a blade body's mixing head.

Rather, the mixing head disclosed by the cited Van De Water reference defines a passageway that has a regular cross-section for its entire extent. On the other hand, the Rudasill reference discloses a mixing head that defines a passageway which extends from one end thereof, but which terminates at an aperture that is located only part-way to the other end thereof. As such, the Rudasill reference likewise fails to disclose a passageway that extends between first and second ends of a blade body (or even of a mixing head for that matter).

At this stage, it is worthwhile to note that it, quite simply, would not be possible for the Van De Water mixing head to be combined with the Rudasill mixing head. In the regard, it will be appreciated that the Rudasill reference discloses two conical mixing heads – each mounted, at one end thereof, to a shaft. It is respectfully submitted that each of the two conical mixing heads disclosed by Rudasill must be mounted at a respective end thereof to their respective shafts, rather than by mid-positioned vanes for example, since Rudasill's conical mixing heads are designed for unimpeded telescopic nesting one within the other (see Page 2, Lines 21-29). Clearly, it would not then be possible to mount the Rudasill mixing heads to their shafts by, for example, vanes – since such vanes would interfere with the desired nesting of the conical heads. As such, the Applicant respectfully submits that it would not be possible for the Rudasill mixing head to be modified, neither in view of the Van De Water reference nor otherwise, to arrive at a mixing head that defines a passageway extending between first and second ends of a blade body.

In contradistinction, the present application provides for a mixing head having a blade body which defines a passageway that extends – and tapers as it extends – between first and second ends of a blade body's mixing head.

Now, at this stage, the Applicant respectfully notes that, with this response, Claim 8 has also been currently amended to *clarify* the nature of the recited blade body of the mixing head. More specifically, the blade body is now recited in Claim 8 as having a first open end and an opposed second open end. The recited passageway of the Applicant's invention, therefore, extends – and tapers as it extends – between the first and second open ends. [It is worthwhile to note that, unless specifically stated to the contrary herein, all amendments made were made for the purposes of clarifying the claims, only, and were not made for reasons relating to 35 U.S.C. §§ 102 or 103.]

The Applicant respectfully submits that, with the aforesaid current amendment to Claim 8, it should be more clear than ever that no combination of the cited Van De Water and Rudasill references renders obvious each and every one of the features of the Applicant's invention which are recited in Claim 8 of the present application. While the Van De Water may have two open ends, the Rudasill reference quite clearly (particularly in view of its disclosures aforesaid) does not. Moreover, in view of the Rudasill disclosures discussed hereinabove, the Applicant respectfully submits that it would not be possible to modify the Rudasill mixing head to defines two open ends.

At this stage, the Applicant also respectfully submits that the mixing heads which are held to have been disclosed by the cited Van De Water and Rudasill references (A) are of a completely different structure, (B) operate in a completely different way, and (C) perform a completely different function, than the claimed mixing head with its blade body in the Applicant's fluid mixing apparatus – as these features are specifically recited in Claim 8 of the present application.

In view of all of the foregoing, the Applicant respectfully submits that *no* combination of the cited Van De Water and Rudasill references discloses a fluid mixing apparatus that possesses each and every one of the claimed limitations of Claim 8.

The Applicant respectfully submits that the aforesaid features, not being disclosed in any of the cited prior art, are *both* novel and inventive. As such, the Applicant respectfully submits that these features provide a foundation to traverse the Examiner's obviousness objection to Claim 8 of the present application.

To recapitulate, in view of the submissions made above, the Applicant respectfully disagrees with the Examiner's finding that it would be obvious to combine the cited Van De Water and Rudasill references, to arrive at an apparatus that possesses each and every one of the claimed elements of Claim 8. Moreover, the Applicant respectfully submits that Claim 8 is directed to allowable subject matter, and requests reconsideration and removal of the Examiner's aforementioned objection thereto under 35 U.S.C. § 103(a).

B. Non-Obviousness of the Combination

In addition to the respectful submissions tendered hereinabove, the Applicant also notes its respectful position that it would *not* have been obvious to combine the cited Van De Water and Rudasill references. The Applicant respectfully submits that both of these cited references actually *teach away* from any such combination.

The Applicant shall first respectfully address the Examiner's "obviousness" rejection of Claim 8, as being unpatentable over a combination of the cited Van De Water and Rudasill references. In this regard, the Applicant respectfully submits that, because the cited Van De Water reference relates to washing machines, it would not have been obvious for persons having ordinary skill in the art to combine this reference with the cream churn that is disclosed in the cited Rudasill reference – which latter reference does not disclose any potential uses in association with washing machines nor even in fluid mixing, but rather only in fluid separation (i.e., churning), contexts.

The Applicant's respectful position that it would not have been obvious for persons having ordinary skill in the art to combine the cited Van De Water and Rudasill

references is further supported by each of the following specific “teachings away” from such a combination. That is, the Applicant respectfully submits that there are a number of portions of the cited Van De Water reference that actually teach away from any combination of that reference with the churn disclosed by the Rudasill reference.

For example, the object of the Van De Water washing machine is disclosed as being to avoid the quick stroke of the plunger – something which was viewed as detrimental to proper washing (see Page 1, Paragraph No. 3, Lines 1-4 of the Van De Water reference). In teaching so, the Van De Water reference teaches away from uses in conjunction with the Rudasill churn, which explicitly involves a quickly made downward stroke (see Page 2, Lines 63-70) which was viewed as being advantageous to the churning of cream.

Moreover, to the knowledge of the undersigned Agent for the Applicant, washing machines have never been previously *combined* with cream churns. Respectfully, this position is not one that has been contradicted by *any* of the references previously cited by the Examiner against the present application.

Finally, it is respectfully submitted by the Applicant that both, individually and one from the other, (a) the washing machine disclosed by the cited Van De Water reference, and (b) the cream churn disclosed by the cited Rudasill reference:

- (A) are of a completely different structures,
- (B) operate in a completely different ways, and
- (C) perform a completely different functions,

than the claimed fluid mixing apparatus of the Applicant’s invention (as recited in Claims 8-23 of the present application).

In view of all of the foregoing, the Applicant respectfully submits that it would not have been obvious to persons having ordinary skill in the art to combine the teachings of the cited Van De Water and Rudasill references. That is, it would not have been obvious to combine a washing machine (i.e., a fluid agiting apparatus) with a cream churn (i.e., a fluid separating apparatus) to arrive at the claimed fluid mixing apparatus of the Applicant's invention (as recited in Claims 8-23 of the present application).

Accordingly, it is the Applicant's respectful submission that it would not have been obvious to persons having ordinary skill in the art to combine the teachings of the cited references to arrive at the subject matter of the invention.

Rather, the Applicant respectfully submits that the cited references contain, as aforesaid, teachings away from such a combination. In view of the specific teachings of the cited references, including *inter alia* as aforesaid, the Applicant respectfully submits that it would not have occurred to a person having ordinary skill in the art to combine the teachings of the cited references to arrive at fluid mixing apparatus that has each and every one of the features which are recited in Claims 8-23 of the Applicant's above-referenced U.S. patent application.

C. No Prima Facie Case for Obviousness

Lastly, and with the greatest respect, the Applicant submits that the Examiner has failed to provide the requisite degree of specificity to make out a *prima facie* case for obviousness. In this regard, the Applicant notes that the Examiner has not specified how the teachings of the cited Van De Water reference discloses all of the recited subject matter (save except for a mixing head of the configuration of the blade body with two ends having a tapered passageway) as defined within the scope of each and every one of the features of Claims 8-23 of the application.

The Applicant also respectfully submits that the claim rejections under 35 U.S.C. § 103 which are provided in the aforementioned Office action do not provide sufficient

specificity of the bases for those objections so as to enable the Applicant to make full and proper response thereto.

With regard to all of the foregoing, therefore, the Applicant respectfully submits that the Examiner has not set out the aforementioned rejections, under 35 U.S.C. § 103, with sufficient reference to each and every one of the features of the invention which are specifically recited in Claims 8-23. It is respectfully submitted that such detail is necessary to make out a *prima facie* case for obviousness. Pursuant to Section 2142 (and Section 2143.03) of *MPEP*, "the prior art reference (or references when combined) must teach or suggest all the claim limitations" [emphasis added]. Section 2142 of *MPEP* goes on to state the following:

"A statement of a rejection that includes a large number of rejections must explain with reasonable specificity at least one rejection, otherwise the examiner procedurally fails to establish a *prima facie* case of obviousness."

Section 2143.03 of *MPEP* states as follows:

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. [...] "All words in a claim must be considered in judging the patentability of that claim against the prior art." [...] If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious."

The Examiner has failed to make out a *prima facie* case for the obviousness of an apparatus possessing all of the features recited by each of Claims 8-15 and 17-22. Accordingly, the Applicant respectfully submits that the Examiner has likewise failed to establish a *prima facie* case for the obviousness of any of the claims (16 and 23) depending directly or indirectly therefrom.

An objection under 35 U.S.C. § 103 should set out how the teachings of the cited references – i.e., with specific reference to all relevant passages therefrom – might be modified (whether in combination with another reference or with the knowledge

available to one of ordinary skill in the art) to arrive at a device that possesses all of the features of at least one of the claims of the invention.

By way of non-limiting examples, the Applicant also respectfully notes that the Examiner has, among other things, failed to make specific reference to any teaching, suggestion, or motivation in either, or both, of the cited references that would point to *inter alia* any of the following features which are recited in various claims of the present application:

- a housing including a base;
- a blade body;
- a drive assembly positioned within a housing;
- an upper bearing subassembly that engages a shaft;
- semi-circular grooves, formed in mating bushing blocks, for slidably receiving a shaft;
- a pad, fabricated from a self-lubricating material, which is provided with longitudinal ribs formed therein;
- a slot formed along an edge of a housing's base, permitting a shaft to be laterally received into, and removed from, the slot;
- one or more mounting members connecting roller assemblies to either a housing base or a bearing assembly; and
- one or more mounting members mounted to, and depending downwardly from, a housing base or a bushing block.

To recapitulate, in the absence the provision of any explicit indication of how the cited references teaches or suggests all of the features of Claims 8-23 of the application (or the combination necessary to arrive at same), the Applicant respectfully submits that that the Examiner has failed to make out a *prima facie* case for obviousness, and therefore, that the Examiner's finding of obviousness is unsupported.

As such, reconsideration of Claims 8-23 of the application is hereby earnestly and respectfully requested.

D. Summary of the Applicant's Position Concerning Non-Obviousness

To recapitulate, in view of the submissions made above, the Applicant strenuously, but most respectfully, disagrees with the Examiner's finding that it would have been obvious to combine the cited Van De Water and Rudasill references to arrive at a device possessing each and every one of the features of independent Claim 8. (Of course, it is perhaps worthwhile to take this opportunity to also note the Applicant's respectful position that it would not have been obvious to combine the cited references to arrive at a device possessing each and every one of the features of Claims 9-15 and 17-22.) The Applicant respectfully submits that Claim 8 is directed to allowable subject matter, and requests reconsideration and removal of the Examiner's aforementioned objections thereto under 35 U.S.C. § 103(a).

Similarly, the Applicant also respectfully submits that Claims 9-23, as depending directly or indirectly from Claim 8, are also now directed to allowable subject matter and, therefore, their reconsideration is also hereby respectfully requested.

Summary

In view of all of the foregoing, it is respectfully requested that each of Claims 1-23 be allowed in their current form. Reconsideration of the above-identified application in view of the current amendments and preceding remarks, and with a view toward timely issuance of a Notice of Allowance, is hereby respectfully requested.

If after reviewing this response, the Examiner believes that a telephone or personal interview would facilitate the resolution of any remaining matters, the undersigned attorney may be contacted at the number set forth hereinbelow.

Respectfully submitted,



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Encl.

Terminal Disclaimer

Fees pursuant to 37 CFR 1.20(d)